



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 14.07.1999
COM (1999) 335 final

99/0070 (COD)

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)

on development cooperation with South Africa

(presented by the Commission pursuant to Article 250 (2) of the EC-Treaty)

EXPLANATORY MEMORANDUM

The proposed Regulation lays down the objectives and procedures for operations under Budget line B7-3200.

The initial version of this proposal was presented by the Commission on 12 March 1999.

On the basis of a report by Mr Raimondo Fassa, Parliament (in its first reading) approved the Commission proposal on 5 May 1999, subject to 6 amendments.

The Commission has communicated to the Parliament its position on the proposed amendments, one of which can be accepted in full, two in part, and three of which the Commission cannot accept.

The Commission therefore has to draw up an amended proposal incorporating those amendments that it does accept (see underlined text) which are designed to ensure a greater coordination and sustainability of programmes undertaken.

The amendments which the Commission was unable to accept concerned certain committee procedures - rejected because clarity and consistency require that uniformity be maintained in matters of comitology; systematic coordination in the beneficiary country with the EIB - impractical as the EIB has no permanent representation; and the formalisation of transmission of evaluations and reports to the South African National Assembly, which would create a strange precedent.

The Commission's initial proposal has been discussed by the Council's Africa Working Party, but no common position has yet been agreed.

Amended proposal for a

EUROPEAN PARLIAMENT AND COUNCIL REGULATION (EC)

on development cooperation with South Africa

THE EUROPEAN PARLIAMENT AND COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 179 thereof,

Having regard to the proposal from the Commission¹,

Acting in accordance with the procedure laid down in Article 251,

- (1) Whereas, since the elections of April 1994 and the establishment of a democratic government, the Community has turned towards a strategy of support for the policies and reforms undertaken by the South African authorities;
- (2) Whereas the Council has adopted the Council Regulation (EC) N° 2259/96 of 22 November 1996 on development cooperation with South Africa²;
- (3) Whereas this above-mentioned Regulation shall expire on 31 December 1999;
- (4) Whereas the Agreement on Trade, Development and Co-operation between the European Community and the Republic of South Africa stipulates in its Chapter VII that financial assistance in the form of grants shall be covered by a special financial facility established under the Community budget, that the Community declares its willingness to maintain its financial co-operation with South Africa at a substantial level, and that it will take the necessary decisions in this respect on the basis of a proposal by the Commission;
- (5) Whereas other appropriate instruments could be made available after this Agreement has entered into force, in particular in the framework of the future EC/ACP Co-operation Agreement and the eligibility of South Africa to the European Development Fund,
- (6) Whereas the above-mentioned Agreement contains in its Chapter V provisions on aims, priorities, methods and implementation of Development Cooperation with South Africa;

¹ COM (1999) 124 final, 12.3.1999.

² OJ L 306, 28.11.1996.

- (7) Whereas in the light of the implementation of the Council Regulation (EC) N° 2259/96 of 22 November 1996 above-mentioned, and of the Special Report n° 7/98 of the Court of Auditors in respect of the European Community Development Aid Programme regarding South Africa (1986-1996), the Council Regulation (EC) N° 2259/96 of 22 November 1996 has to be adapted, in particular as concerns simplification of procedures, greater focus on sectoral priorities and decentralised decision-making;
- (8) Whereas assistance provided under this Regulation shall be implemented in coherence with actions of other donors, including multilateral institutions,
- (9) Whereas Council Decision 87/373/EEC of 13 July 1987³ lays down the procedures for the exercise of implementing powers conferred on the Commission and the operation of the Committee that shall assist the Commission;
- (10) Whereas the operation of this Committee should follow the management procedure or the advisory procedure where the management procedure is not considered appropriate;
- (11) Whereas Council Regulation (EC, Euratom) N° 2988/95 of 18 December 1995 on the protection of the Communities' financial interests⁴ establishes a common legal framework for all the fields of the communities' own resources and expenditure;
- (12) Whereas Council Regulation (EC, Euratom) N° 2185/96 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities⁵ applies to all areas of the Communities' activity without prejudice to the provisions of the Community rules specific to the different policy areas,

HAVE ADOPTED THIS REGULATION:

Article 1

Aims

The Community shall implement financial and technical cooperation with South Africa to support the policies and reforms carried out by that country's national authorities in a context of policy dialogue and partnership.

The aim of the Community cooperation programme, entitled the "European Programme for Reconstruction and Development in South Africa", shall be to contribute to South Africa's harmonious and sustainable economic and social development and to its insertion into the world economy and to consolidate the

³ OJ L 197, 18.7.1987.

⁴ OJ L 312, 23.12.1995.

⁵ OJ L 292, 15.11.1996.

foundations laid for a democratic society and a State governed by the rule of law in which human rights and fundamental freedoms are fully respected.

Within this context the Community shall give priority to supporting operations which contribute to the fight against poverty.

Article 2

Areas of cooperation

Development co-operation to be carried out under this Regulation will focus mainly on:

- support to policies, instruments and programmes aiming at the progressive integration of the South African economy into the world economy and trade, for employment creation, development of private sector, regional cooperation and integration. In this latter context, special attention will be given to providing support to the adjustment efforts occasioned in the region by the establishment of the free-trade area under the Trade, Development and Cooperation Agreement, especially in the SACU. Promotion of mutual general interest cooperation between European Union and South African businesses may be considered as well;
- improvement of living conditions and delivery of basic social services;
- support to democratisation, the protection of human rights, sound public management, the strengthening of local governments and involvement of civil society in the development process.

Dialogue and partnership between public authorities and non-governmental development partners and actors will be promoted.

Programmes shall focus on fight against poverty, take into account the needs of the previously disadvantaged communities and reflect the gender and environmental dimensions of development.

Article 3

Eligibility of cooperation partners

Cooperation partners eligible for financial assistance under this Regulation shall be national, provincial and local authorities and public bodies, non-governmental organisations and community-based organisations, regional and international organisations, institutions and public or private operators. Any other body could be eligible if so designated by both parties.

Article 4

Means, nature of expenses, information on the programme and coordination

1. The means that may be deployed under the cooperation operations referred to in Article 2 shall include in particular studies, technical assistance, training or other services, supplies and works, and also evaluation and monitoring audits and missions.
2. Community financing in local or foreign currency, depending on the needs and nature of the operation, may cover:
 - government budget expenditures to support reforms and policy implementation in the priority sectors identified through a policy dialogue, under the form of direct sectoral budget support;
 - investment and equipment;
 - in certain cases, and in particular where a programme is implemented by a non-government partner, taking into account the fact that the programme has to aim as much as possible at long term sustainability, recurrent expenditure (including administrative, maintenance and operating costs).

Part of the financing may be channelled, in a targeted manner (e.g. emerging entrepreneurs), in the form of risk capital or interest rate subsidies to European Investment Bank loans.

3. A financial contribution from the partners referred to in Article 3 shall in principle be required for each co-operation operation. That contribution will be requested in accordance with the possibilities of the partners concerned and depending on the nature of each operation. *It shall particularly be sought in cases where a project is designed as a start-up for an open-ended activity, in order to ensure the sustainability of such projects after Community funding has ceased.* It may be in kind. In specific cases where the partner is either a non-governmental organisation or a community-based organisation, the contribution may not be required.
4. The Commission may take any appropriate step to ensure that the Community character of aid provided under this Regulation is made known.
5. Opportunities may be sought for potential cofinancing with other donors, particularly the Member States.
6. In order to achieve the objectives of coherence and complementarity referred to in the Treaty and with the aim of guaranteeing optimal effectiveness of the aid, the Commission may take all necessary co-ordination measures, notably:
 - a) the establishment of a system for the systematic exchange of information on actions financed or planned to be financed by the Community and the Member States, *and the EIB*;

- b) on-the-spot co-ordination of these actions by means of regular meetings and exchange of information between the representatives of the Commission and the Member States in the beneficiary country.
7. The Commission, in liaison with the Member States, may take any steps necessary to ensure adequate co-ordination with other donors concerned.

Article 5

Form of financial support

Financial support under this Regulation shall take the form of grants.

Article 6

Programming

1. Triennial indicative programming based on specific objectives shall be carried out in the context of close contacts with the South African Government and taking account of the results of the co-ordination referred to in Article 4 (6) and (7). The indicative programming process will fully respect the principle of recipient led programming. Such a programming should result in aid being focused each year in a limited number of sectors identified amongst those areas referred to in Article 2. Provision is made where appropriate so that certain initiatives could be continued over longer time periods.
2. In order to prepare for each programming exercise, in the context of increased co-ordination with the Member States, including on the spot, the Commission shall draw up a recapitulative document on co-operation strategy (Strategy Paper) to be examined by the Committee referred to in Article 8 hereafter referred to as the Committee. This Strategy Paper shall take into account the results of the most recent overall evaluation of operations financed under Regulation 2259/96 and under this Regulation, of other regular evaluations of operations. This document will be discussed at the request of the Commission or one or more Committee members. In that case, where it is not possible to reach a desirable consensus on the Strategy Paper, the Committee shall give its opinion in accordance with the procedure referred to in Article 8.
3. The Commission shall forward a triennial Indicative Programme to be signed by the Commission and the South African Government, drawn up on the basis of that examination, to the Committee for information. An exchange of views shall take place once a year, on the basis of a presentation by the Commission's representative of the general guidelines for the operations to be carried out in the year ahead.

Article 7

Procedures

1. The Commission shall be responsible for appraising, taking decisions on and managing operations conducted under this Regulation, in accordance with the budgetary and other procedures in force, notably those laid down in the Financial Regulation applicable to the general budget of the European Communities.
2. In the specific case of contribution of the EPRD to regional programmes in the SADC area financed from the EDF, this contribution may be utilised following Lomé Convention modalities, provided that the provisions of the Financial Regulation applicable to the general budget of the European Communities are respected.
3. In order to ensure transparency and achievement of the objectives referred to in Article 4 (6), the Commission shall forward project profiles to the Member States and their local representatives as soon as the decision to appraise them has been taken. The Commission shall subsequently update the project profiles and forward them to the Member States.
4. All financing agreements or contracts concluded under this Regulation shall provide for on-the-spot checks by the Commission and the Court of Auditors in accordance with the usual arrangements established by the Commission pursuant to the rules in force, in particular those laid down in the Financial Regulation applicable to the general budget of the European Communities.

In addition, the Commission may carry out on-the-spot checks and inspections in conformity with Regulation n° 2185/96.

The measures taken by the Commission in accordance with the procedure set out in Article 8 shall provide for adequate protection of the financial interests of the European Community in conformity with Regulation n° 2988/95.

5. Where operations give rise to financing agreements between the Community and South Africa, such agreements shall stipulate that taxes, duties and charges shall not be borne by the Community.
6. Participation in invitations to tender and contracts shall be open on equal terms to all natural and legal persons in the Member States, South Africa and the other ACP States. Participation may be extended to include third countries in duly substantiated cases and in order to ensure the best cost-effectiveness ratio.
7. Supplies shall originate in the Member States of the European Community, South Africa or the other ACP States. In duly substantiated exceptional cases, they may originate in other countries.

8. Except as otherwise in the present Regulation, contracts shall be signed by the South African Government. In addition, if a contract is not covered by a financing agreement, contracts shall be concluded by the Commission.

In application of Article 111 of the Financial Regulation applicable to the general budget of the European Communities, payments will be made through a local Paying Agent which will be established by agreement between the South African authorities and the Commission, and by whom bank accounts in local currency and EURO will be opened. The Paying Agent must keep a full account of operations on these accounts and submit to the controls of the Commission and the Court of Auditors.

In application of Article 109 of the Financial Regulation applicable to the general budget of the European Communities, a National Authorising Officer may be appointed.

Article 8

Comitology

1. The Commission shall be assisted by a Committee, composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

The Commission shall adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the Committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it had decided for a period of not more than one month from the date of such communication.

The Council, acting by a qualified majority, may take a different decision within the time limit referred to in the previous paragraph.

3. By way of derogation to paragraph 2. above, for financing decisions concerning any operation at a cost of over EURO 5 million and below EURO 25 million, or any adjustment of such an operation involving an increase of more than 20 % in the amount initially agreed, and proposals arising for substantive amendments in the execution of a project for which a commitment has already been made, the Committee shall deliver its opinion on the draft within a time limit which the Chairman may lay down according

to the urgency of the matter, if necessary by taking a vote. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

4. The Commission shall inform the Committee succinctly of financing decisions it intends to take concerning projects and programmes of a value of under EURO 5 million. Such information shall be given at least one week before the decision is taken.
5. Where the increase referred to in paragraph 3. above is more than EURO 5 million but less than 20 % of the original commitment, the Committee's opinion shall be sought by simplified and accelerated procedures.
6. In case of programmes approved by the Committee and financed through tranches relating to more than one financial year, the Commission will take yearly subsequent financing decisions, not exceeding the determined maximum expenditure for the approved programme and in the limit of financial resources made available by the budgetary authority, without further communication to the Committee.

Article 9

Monitoring and evaluation

After each financial year the Commission shall submit an annual report on implementation of this Regulation to the European Parliament and the Council. The report shall set out the budget turnout with regard to commitments and payments and the projects and programmes financed in the course of the year. It shall contain statistics on contracts awarded for implementing projects and programmes.

In addition the Commission shall monitor progress against each operations' objectives in terms of outputs and outcomes, using objectively verifiable indicators.

The Commission shall regularly evaluate operations financed by the Community to determine whether those operations' objectives have been reached and to establish guidelines for improving the effectiveness of future operations. Summaries of evaluation reports shall be forwarded to the Member States. Full reports shall be made available to Member States which request them.

By 31 October 2003 and eighteen months prior to the expiry of this Regulation, the Commission shall submit to the European Parliament and the Council an overall evaluation of the operations financed by the Community forming the triennial programme 2000-2002 under this Regulation, accompanied if necessary by proposals for amendments to it and in the latter case by suggestions for the future of the Regulation.

Article 10

Annual appropriations

The annual appropriations shall be authorised by the budgetary authority within the limits of the financial perspective.

Each year the budgetary description will fix a ceiling within the annual appropriation for Technical Assistance contracts to be concluded by the Commission for the carrying out of joint operations for the mutual benefit of the European Communities and of the beneficiary.

Article 11

Duration

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Communities* and shall expire on 31 December 2006.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President